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MEMO ENDORSED

October 9, 2017

VIA FAX (212)805-7949

Honorable J. Kevin Castel
United States District Judge
United States District Court
Southern District of New York
Courtroom 11D
Daniel Patrick Moynihan
United States Courthouse

RE: United States of America v. Scott Tucker and Timothy Muir
16-cr-91 (PKC)

Dear Judge Castel:

We represent Fredericks Peebles & Morgan LLP, including its partner Conly J. Schulte, which has represented the Santee tribe and tribal entities (Santee) and the Modoc tribe and tribal entities (Modoc) as the record before you demonstrates. James E. Nesland has represented the Santee and Modoc tribes and tribal entities in connection with the referenced matter and the underlying grand jury investigation. He joins in the below request. I have shared a copy of this letter with the prosecuting Assistant United States Attorneys and requested that the government consent to the granting of the below request.

I understand that Tim Muir is making production pursuant to a trial subpoena, which Your Honor has enforced, limited to all communications about payday lending between Mr. Muir and Mr. Schulte for the time period 2006-2013. I also understand that the production is being made without particularized review of each item of the production, such that there might occur production of underlying communications and work product involving the Santee and the Modoc that do not relate to payday lending, and/or that might remain privileged or protected without a waiver, and/or that might be included with or embedded within or attached to the items being produced but that cannot be within the ambit of Your Honor's ruling as a matter of law. Neither the Santee nor the Modoc have ever waived their respective attorney client privilege or work product protection in any manner, and they continue to instruct counsel to invoke their respective privilege and protection.

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Honorable J. Kevin Castel, U.S.D.J.

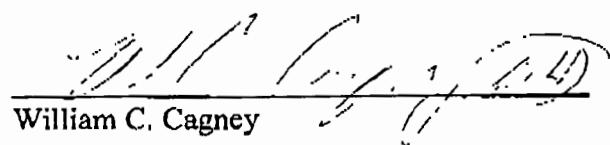
October 9, 2017

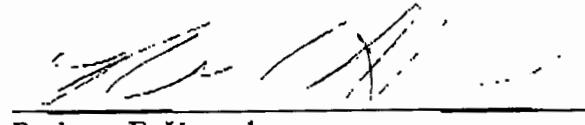
Page 2

Rule 502 of the Federal Rules of Evidence provides a protective mechanism for this very dilemma. Rule 502(d) states: "A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court – in which event the disclosure is also not a waiver in any other federal or state proceeding."

Accordingly, it is respectfully requested that the Court endorse this letter, so ordered, such that the production by Mr. Muir pursuant to the trial subpoena shall not constitute a waiver either in the referenced matter or in any other federal or state proceeding.

Respectfully submitted,


William C. Cagney


Rodman E. Honecker

cc: Counsel of Record via ECF
James E. Nesland, Esq.
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The production by Mr. Muir
pursuant to the trial subpoena
shall not constitute a
waiver of privilege or work
product of production in this
or any other federal or
state proceeding. Nothing
herein alters the scope or
efficacy of the Court's
ruling on the crime-fraud
exception. SO ORDERED.
J. KEVIN CASTEL, U.S.D.J.
10-10-17

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TO: Hon. J. Kevin Castel, USDJ FACSIMILE NO.: (212)805-7949

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COMMENTS: Re: USA v. Scott Tucker, et al., 16-cr-91

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